XII-189 (Jail)
C. J. P. R. 11/94/2,000

CF0000061684

CA.1381/97
(02)

APPEAL OF PRISONER

Division Bench

No. 1125 Name भोकलसाय

Father's name उदनसाय

Residence मालीपारू (कुमगढ़ा) Age बीस वर्ष

Sentenced to आजीवन कारावास. On 19-6-97

Under section 302 भा.दं.सं. by प्रथम अपर सत्र न्यायाधीश रायगढ़

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Judgement 19-6-97 [10 Pages]

2 Date received 19-6-97

3 Date on which Appeal sent 20-6-97

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 1125 Name भोकलसाय

Confined in किशोर बंदी संधा छत्तिस Jail रायपुर सरिहुर

No. 1038 Dated 21.6.97 1997

Forwarded to the CHIEF JUDICIAL MAGISTRATE RAIGARH

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न - निर्णय प्रतिलिपि

Superintendent
District jail, Raigarh (M.P.)

Date of receipt in 23-6-97 office C.J.M. Raigarh

Date of receipt record to accompany the 28-6-97 with file

Memo of Appeal to the Appellate court 28-6-97

No A/C.J.M./Raigarh Dated 28-6-1997

Forwarded to the Court of Sessions Judge, Raigarh (Chhattisgarh) along with Cr. No. 232/96 P.S. Kotwali & Cr. No. 41/96 P.S. Dharamjaigarh

Date of receipt in Appellate Court

(P. T. O.)

28-6-97

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

मामला क्रमांक Cr.A.1381/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO AND & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.1381 of 1997

Appellant : Bhokal Sai

Vs.

Respondent : State of Madhya Pradesh

Shri Abhay Tiwari learned counsel for the appellant.
Shri D.K. Gwalare Dy. GA for the respondent/State.

The matter is listed on IA No. 3058/2006, an application for hearing the case finally at an early date.

Counsel for the appellant submits that the appellant is in detention since 12.9.1995, thereby he has completed more than 11 years of jail sentence and he is not in a position to furnish bail bonds, therefore the appeal may be heard finally to which counsel for the State has no objection. Thus the appeal is heard finally.

ORAL JUDGMENT
(30.11.2006)

Per L.C. Bhadoo , J:

This appeal is directed against the judgment of conviction and order of sentence dated 19-6-1997 passed by First Additional Sessions Judge,

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A...1381/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Raigarh in Sessions Trial No. 252/1995 whereby the learned Additional Sessions Judge after holding the accused appellant guilty under Section 302 of I.P.C. has sentenced him to undergo imprisonment for life.

2. The case of the prosecution is that on 11-9-1995 at about 7 p.m. when Udal was cooking food at his residence, the accused came there with knife and said that he would kill him and attacked with knife 2-3 times on his stomach and neck. When Udal tried to save himself from the attack, the accused assaulted him with knife on his hands also. On account of stomach injuries, the intestines came out. Thereafter accused fled away from the scene of occurrence. Choukidar Adhindas (P.W. 1) was informed about the incident and Udal was taken to the Police Station, Gharghoda where he himself lodged report Ex. P-13. Based on that an offence under Section 307 of I.P.C. was registered. Investigating Officer took up investigation and requested the Executive Magistrate for recording the dying declaration. On the request of Investigating Officer, P.W. 12 Suresh Agrawal- Tehsildar recorded dying declaration of Udal vide Ex. P-10. Udal was admitted to the Government Hospital, Raigarh where the injuries sustained by him were examined by Dr. B.R. Banjare P.W. 10 who noticed as many as 7 incised wounds on stomach, chest and hands and opined

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(29) (3)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1381/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that injury no. 1 which was penetrating wound in the size of 4" x 2" x 2" on the right side of stomach was dangerous, as his small intestine was coming out, there was cut in the intestine. Injury report is Ex. P-8. However, during treatment Udal succumbed to the injuries on 14-9-1995 therefore, Merg intimation Ex. P-1 was sent to Kotwali Raigarh, on the basis of which the crime was converted into Section 302 of I.P.C. Investigating Officer took into possession knife under Ex.P-4, plain and blood stained soil from the place of occurrence under Ex. P-5 and clothes of the accused under Ex. P-6. Post mortem was conducted by Dr. S.S. Bajpai P.W. 17 and Dr. A.M. Gupta P.W. 20 and the report Ex. P-12 was prepared in K.G. Hospital, Raigarh. According to the opinion of the doctors the cause of death was hypovolaemic and septicaemic shock due to multiple injuries leading to hemorrhage and septicemia and the death was homicidal in nature.

3. After completion of usual investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Gharghoda who in turn committed the case to the Court of Sessions Judge, Raigarh from where the learned Additional Sessions Judge received the same on transfer for trial.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1381/92 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. The prosecution in order to establish charge leveled against the accused appellant examined in all 22 witnesses. Statement of the accused-appellant was also recorded under Section 313 of Cr.P.C. in which he pleaded ignorance and false implication in the crime in question.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused-appellant as mentioned above.

6. We have heard Shri Abhay Tiwari, Advocate on behalf of the appellant and Shri D.K. Gwalre, Dy. Govt. Advocate on behalf of the State.

7. Counsel for the appellant has not disputed that the death of Udal was homicidal in nature. That apart, P.W. 12 Suresh Agrawal, the Executive Magistrate has stated in his evidence that Udal made dying declaration Ex. P-10 before him. Udal lodged F.I.R. Ex. P-13 before A.S.I. - K.P. Awasthi P.W. 18, in which he stated about dying declaration, involvement of the accused and assault by him with knife. Dr. S.S. Bajpai P.W. 17 who conducted post mortem examination has stated that the death of Udal was homicidal in nature. Thus in view of above, it is established that death of Udal was homicidal in nature.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1381/97... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. As far as involvement of accused-appellant in the crime in question is concerned, counsel for the appellant submits that in fact Udal was attacked by his son and wife and the accused has been falsely implicated in the crime.

9. On the other hand, learned counsel for the respondent/State supported the impugned judgment of the trial Court.

10. In order to appreciate the arguments advanced by Shri Tiwari appearing on behalf of the appellant, we have perused the impugned judgment and the record of the trial Court.

11. P.W. 18 A.S.I. - K.P. Awasthi has stated that on 12-9-1995 oral report was lodged before him on which he recorded report Ex. P-13. P.W. 12 Suresh Agrawal has stated in his evidence that he was posted as Executive Magistrate on 12-9-1995. On that day, Station House Officer of Police Station, Gharghoda requested him for recording dying declaration of Udal, on which he went to the hospital where Udal was admitted, obtained certificate from the doctor regarding the fitness of Udal to give statement and thereafter he recorded the statement of Udal, in which he stated that accused Bhokal assaulted him with knife on his stomach 4

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA/1381/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

times and the dying declaration is Ex. P-10. Perusal of dying declaration Ex. P-10 reveals that on the fateful day when Udal was at his residence, accused came there, both of them consumed liquor and thereafter accused assaulted him on stomach with knife 4 times and then he fled away. The above dying declaration is further corroborated by the evidence of P.W. 1 Adhindas. P.W. 5 Birso, the wife of Udal also corroborated the above fact and stated that her husband made oral dying declaration before her regarding the injuries inflicted by accused Bhokal. There is nothing in the cross-examination of this witness which makes her statement unreliable or untrustworthy. Therefore, from the above dying declaration Ex. P-10 given before the Executive Magistrate and oral dying declaration given before P.W. 1 Adhindas and P.W. 5 Birso, wife of Udal, it is established that accused inflicted injuries to Udal with knife and as per the doctors' opinion, injury No. 1 was serious in nature, because of which the small intestine was also punctured and the same came out of the stomach. The accused inflicted 7 injuries, 4 on stomach and remaining on hands which shows that accused attacked the deceased with an intention to cause death, therefore, we are of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1381/97... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	accused-appellant under Section 302 of I.P.C. and the judgment of the trial Court is based on legal evidence. 12. In the result, the appeal being devoid of substance is liable to be dismissed and it is accordingly dismissed. Sd/- L.C. Bhadoo Judge	Sd/- DHIRENDRA MISHRA Judge

P.T.O.